

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FRANCISCO JULIADA ET AL., DEFENDANTS. FRANCISCO JULIADA AND SIMPLICIO LUNA, APPELLANTS.

G. R. No. 32116. February 20, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The penalty imposed by the trial court in this case for the crime of robbery is, three years, eight months and one day of presidio correccional upon Simplicio Luna, and ten years of presidio correccional (mayor) upon Francisco Juliada, for his recidivism. The court further sentenced them to pay the costs, and ordered that the money and wallet presented in evidence be returned to the offended party.

The defendants allege on appeal through counsel de officio that their motion for dismissal filed after the prosecution had closed its evidence should have been granted; that it was error to hold that the aforesaid wallet and the contents thereof belong to the alleged offended party; and that they should be acquitted.

Failure to present the offended party as a witness does not constitute sufficient ground for dismissal. The testimony of the offended party is not essential to convict the defendant. Whether the offended person is to appear or not as a witness in a criminal case, depends upon the prosecuting officer, who is given by law discretion to use him as witness or not. The fact that said officer in the exercise of his discretion does not present the offended party as a witness, does not detract from the efficacy of the proceeding, and does not constitute ground for dismissal thereof. The sufficiency or insufficiency of the evidence in a criminal case does not depend upon whether the offended party took the witness stand or not.

In the instant case, the evidence that the wallet belongs to the offended party is found in the testimony of witness Dungao to the effect that said offended party so stated in the presence of the defendants, and this testimony was not objected to by counsel when Dungao gave it. Aside from this, the circumstance that the wallet may belong to the offended party or not, is not essential to the appellants' rights, in view of their failure to allege and certainly to prove that it belongs to both or to one of them; and it appearing from the record that when defendant Simplicio Luna was about to be searched by Lieutenant Guido, he threw the wallet into the gutter, such act precludes the idea that the wallet belongs to him and that he had been keeping it in his pocket.

The assignments of error are unfounded.

It has been proved that both defendants are recidivists, and, as the Attorney-General correctly observes, the circumstance serves to aggravate their liability in view of the absence of any mitigating circumstance to offset the same. Therefore, the penalty fixed for case 5, article 503 of the Penal Code, must be applied in the maximum degree. It further appears that appellant Francisco Juliada is not only a recidivist, but also an habitual criminal, having been heretofore convicted of theft seven times by final judgment; for this reason he has incurred the additional penalty provided in paragraph (d), section 1, Act No. 3397, as amended by Act No. 3586.

Wherefore, the judgment appealed from is affirmed in so far as the appellants are found guilty of the crime charged, and modified as to the penalties; each of said appellants is hereby sentenced to six years, ten months and one day presidio mayor, with the accessory penalties of law, and the defendant Francisco Juliada is further sentenced to suffer an additional penalty of twenty-one years' imprisonment, with costs against the appellants. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Johns and Villa-Real, JJ., concur.

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